

§ 625.5

7 CFR Ch. VI (1–1–10 Edition)

area, but not more than it determines is necessary for such contribution.

(4) To be enrolled in the program, eligible land must be configured in a size and with boundaries that allow for the efficient management of the area for easement purposes and otherwise promote and enhance program objectives.

(d) *Ineligible land.* The following land is not eligible for enrollment in the HFRP:

(1) Lands owned by a governmental entity;

(2) Land subject to an easement or deed restriction that already provides for the protection of wildlife habitat or which would interfere with HFRP purposes, as determined by NRCS; and

(3) Lands where implementation of restoration practices would be futile due to on-site or off-site conditions.

§ 625.5 Application procedures.

(a) *Sign-up process.* NRCS will publish an HFRP sign-up notice with sufficient time for individuals and entities to consider the benefits of participation prior to the opening of the sign-up period. In the public sign-up notice, the Chief will announce and explain the rationale for decisions for the following information:

(1) The geographic scope of the sign-up;

(2) Any additional program eligibility criteria that are not specifically listed in this part;

(3) Any additional requirements that participants must include in their HFRP applications and program agreements that are not specifically identified in this part;

(4) Information on the priority order of enrollment for funding;

(5) An estimate of the total funds NRCS expects to obligate under new program agreements during a given sign-up; and

(6) The schedule for the sign-up process, including the deadline(s) for applying.

(b) *Application for participation.* To apply for enrollment through an easement or 10-year cost-share agreement, a landowner must submit an application for participation in the HFRP during an announced period for such sign-up.

(c) *Preliminary agency actions.* By filing an application for participation, the applicant consents to an NRCS representative entering upon the land for purposes of determining land eligibility, and for other activities that are necessary or desirable for the NRCS to make offers of enrollment. The applicant is entitled to accompany an NRCS representative on any site visits.

(d) *Voluntary reduction in compensation.* In order to enhance the probability of enrollment in HFRP, an applicant may voluntarily offer to accept a lesser payment than is being offered by NRCS.

§ 625.6 Establishing priority for enrollment in HFRP.

(a) *Ranking considerations.* Based on the specific criteria set forth in a sign-up announcement and the applications for participation, NRCS, in coordination FWS and NMFS, may consider the following factors to rank properties:

(1) Estimated conservation benefit to habitat required by threatened or endangered species listed under Section 4 of the ESA;

(2) Estimated conservation benefit to habitat required by species not listed as endangered or threatened under Section 4 of the ESA but that are candidates for such listing, State-listed species, or species identified by the Chief for special consideration for funding;

(3) Estimated improvement of biological diversity, if enrolled;

(4) Potential for increased capability of carbon sequestration, if enrolled;

(5) Availability of contribution of non-federal funds;

(6) Significance of forest ecosystem functions and values;

(7) Estimated cost-effectiveness of the particular restoration cost-share agreement or easement, and associated HFRP restoration plan; and

(8) Other factors identified in an HFRP sign-up notice.

(b) The NRCS may place higher priority on certain forest ecosystems based regions of the State or multi-State area where restoration of forestland may better achieve NRCS programmatic and sign-up goals and objectives.

(c) Notwithstanding any limitation of this part, NRCS may enroll eligible lands at any time in order to encompass project areas subject to multiple land ownership or otherwise to achieve program objectives. Similarly, NRCS may, at any time, exclude otherwise eligible lands if the participation of the adjacent landowners is essential to the successful restoration of the forest ecosystem and those adjacent landowners are unwilling to participate.

(d) If available funds are insufficient to accept the highest ranked application, and the applicant is not interested in reducing the acres offered to match available funding, USDA may select a lower ranked application that can be fully funded. Applicants may choose to change the duration of the easement or agreement or reduce acreage amount offered if the application ranking score is not reduced below that of the score of the next available application on the ranking list.

§ 625.7 Enrollment of easements.

(a) *Offers of enrollment.* Based on the priority ranking, NRCS will notify an affected landowner of tentative acceptance into the program for which the landowner has 15 calendar days to sign a letter of intent to continue.

(b) *Effect of letter of intent to continue (enrollment).* An offer of tentative acceptance into the program does not bind NRCS or the United States to acquire an easement, nor does it bind the landowner to convey an easement or agree to HFRP restoration plan activities. However, receipt of an executed letter of intent to continue will authorize NRCS to proceed with easement acquisition activities and the land will be considered enrolled into HFRP.

(c) *Acceptance of offer of enrollment.* An option agreement to purchase will be presented by NRCS to the landowner, which will describe the easement area; the easement terms and conditions; and other terms and conditions for participation that may be required by NRCS.

(d) *Effect of the acceptance of the offer.* After the option agreement to purchase is executed by NRCS and the landowner, NRCS will proceed with the remaining activities necessary for NRCS

to purchase an easement, which may include conducting a survey of the easement area, securing necessary subordination agreements, procuring title insurance, and conducting other activities necessary to record the easement or implement the HFRP restoration plan. If the landowner breaches an option agreement to purchase, NRCS is entitled to recover any costs, including administrative or technical costs, expended in reliance of the option agreement to purchase.

(e) *Withdrawal of offers.* Prior to execution and recordation by the United States and the landowner of the easement, NRCS may withdraw its offer anytime due to availability of funds, inability to clear title, or other reasons. The offer to the landowner shall be void if not executed by the landowner within the time specified.

§ 625.8 Compensation for easements.

(a) *Establishment of rates.* (1) The State Conservationist may determine the maximum easement payment rates to be applied to specific geographic areas within the State or to individual easement areas.

(2) In order to provide for better uniformity among States, the Regional Assistant Chief and Chief may review and adjust, as appropriate, State or other geographically based easement payment rates.

(b) *Determination of easement payment rates.* (1) NRCS shall offer to pay not less than 75 percent nor more than 100 percent of the fair market value of the enrolled land during the period the land is subject to the easement less the fair market value of the land encumbered by the easement for easement payments for easements of not more than 99 years.

(2) NRCS shall offer to pay not more than 75 percent of the fair market value of the enrolled land less the fair market value of the land encumbered by the easement for 30-year easements.

(c) NRCS may accept and use contributions of non-federal funds to make payments under this section.

(d) *Acceptance of offered easement compensation.* (1) NRCS will not acquire any easement unless the landowner accepts the amount of the easement payment which is offered by NRCS. The